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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JEAN MARC VAN DEN HEUVEL,

12 Plaintiff,

13 v.

14 EDDIE FREAS et al.,

15 Defendants.
16

No. 2:20-cv-00352-TLN-CKD PS

FINDINGS & RECOMMENDATIONS

17 Plaintiff is proceeding in this action pro se. The court previously granted plaintiff's
18 request to proceed in forma pauperis and dismissed plaintiff's complaint with leave to amend.
19 (ECF No. 4.) Plaintiff subsequently filed an amended complaint, which the court again dismissed
20 with leave to amend. (ECF Nos. 5, 7.) Plaintiff has since filed a Second Amended Complaint
21 and a Third Amended Complaint.¹ For the reasons set forth below, the undersigned recommends
22 dismissing plaintiff's complaint without leave to amend.

23 The federal in forma pauperis statute authorizes federal courts to dismiss a case if the
24 action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted,
25 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.
26 § 1915(e)(2).
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28 ¹ For purposes of these findings and recommendations, the court refers to the Third Amended Complaint as the operative complaint in this matter.

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
3 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327.

6 In order to avoid dismissal for failure to state a claim a complaint must contain more than
7 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
8 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
9 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). Furthermore, a claim
11 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
12 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
13 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S. Ct.
14 at 1949. When considering whether a complaint states a claim upon which relief can be granted,
15 the court must accept the allegations as true, Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007),
16 and construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
17 U.S. 232, 236 (1974).

18 Here, plaintiff’s complaint does not permit the court to make a reasonable inference that
19 defendants are liable for any misconduct. Plaintiff’s complaint appears to allege the following:
20 state court proceedings occurred without plaintiff present (ECF No. 10 at 3); unspecified ADA
21 violations (id.); “unethical order of examinations” at court (id. at 4); “incredibl[y] tough
22 guidelines” set by the state court judge (id.); “false gun accusations” (id.); and unlawful detainer,
23 (id.) Plaintiff also alleges that he served six months in jail for misdemeanor charges. (Id. at 5.)

24 Stated simply, plaintiff has failed to state a claim against either defendant mentioned in his
25 complaint. Although the Federal Rules adopt a flexible pleading policy, a complaint must give
26 fair notice and state the elements of the claim plainly and succinctly. Jones v. Community Redev.
27 Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege, with at least some degree of
28 particularity, overt acts which defendants engaged in that support plaintiff’s claim. Id. Because

1 plaintiff's complaint is so devoid of any specific, concrete allegation and fails to connect its
2 factual assertions in any cogent manner, it fails to place either defendant on notice of what he is
3 alleging. Therefore, the complaint must be dismissed.

4 If the court finds that a complaint should be dismissed for failure to state a claim, it has
5 discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30
6 (9th Cir. 2000) (en banc). Leave to amend should be granted if it appears possible that the defects
7 in the complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see also
8 Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) ("A pro se litigant must be given leave
9 to amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that
10 the deficiencies of the complaint could not be cured by amendment.") (citing Noll v. Carlson, 809
11 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is clear that a
12 complaint cannot be cured by amendment, the court may dismiss without leave to amend. Cato,
13 70 F.3d at 1005-06.

14 As plaintiff has already filed four complaints in this matter and has failed to sufficiently
15 state a claim for which relief can be granted, the undersigned finds that any additional leave to
16 file an amended complaint would be futile. Therefore, the undersigned recommends this action
17 be dismissed without leave to amend.

18 Accordingly, it is HEREBY RECOMMENDED that plaintiff's complaint be DISMISSED
19 without leave to amend.

20 These findings and recommendations are submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
22 after being served with these findings and recommendations, the parties may file written
23 objections with the court and serve a copy on all parties. Such a document should be captioned
24 "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that

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1 failure to file objections within the specified time may waive the right to appeal the District
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: July 23, 2020



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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